

New exploration framework for minerals

Background

The Mines and Minerals (Development and Regulation) Act, 1957 (“**MMDR Act**”) was amended in 2023 to introduce the concept of an ‘exploration licence’. An exploration license is granted by the state government for undertaking reconnaissance operations, prospecting operations or both with respect to certain identified minerals such as lithium, gold, cobalt, and nickel (as provided in the newly introduced Seventh Schedule of the MMDR Act).

A key aspect of the framework is that the State Government is liable to pay to the exploration licensee a portion of the revenue share as discovered in the auction (the “**auction premium**”) payable to the State Government in respect of any mining lease granted in the area pursuant to the operations undertaken by the exploration licensee.

The New Regime

Pursuant to this legislative amendment, the Ministry of Mines, Government of India has, on January 21, 2024, notified amendments to the mineral law framework¹ in order to operationalise the regime for exploration licences.

1. Auction Framework

Pursuant to Section 10BA(9) of the MMDR Act (as introduced by the 2023 amendment), set out the detailed procedure and framework for grant of an exploration license:

- a) The grantee will be selected by means of a descending reverse online electronic auction;
- b) In order to participate in the auction, an applicant must: (a) be an Indian national or a company as defined in Section 2(20) of the Companies Act, 2013, and (b) have a net worth of INR 25,00,00,000 (Indian Rupees twenty five crore);
- c) Applicants are required to quote, for the purpose of receiving payment from the State Government, a percentage share of the auction premium payable by the future mining lessee (subject to a cap to be stipulated by the State Government, which cap cannot be less than 25%); and

¹ Namely, the (a) the Mineral (Auction) Amendment Rules, 2024 (which amend the Mineral (Auction) Rules, 2015); (b) the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Amendment Rules, 2024 (which amend the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016); and (c) the Mineral Conservation and Development (Amendment) Rules, 2024 (which amend the Mineral Conservation and Development Rules, 2017).

- d) The bidder quoting the lowest percentage share is the winning bidder in the auction. Such bidder will be granted the exploration licence subject to furnishing the performance security, obtaining all permits required to commence operations and submitting the scheme for operations in accordance with law.

2. Payment to Exploration Licensee

The Mineral (Auction) Amendment Rules, 2024 stipulate that the State Government will pay to the exploration licensee, the percentage share as quoted by such licensee out of the auction premium deposited in a month by the future mining lessee. In this regard:

- a) This amount is payable for entire term of the mining lease;
- b) The exploration licensee and mining lessee may opt to enter into an agreement for payment of the above share as a lump-sum. In such a case, the exploration licensee is directly paid by the mining lessee (after deducting the same from the dues payable to the State Government);
- c) In case an exploration licensee itself becomes the mining lessee, then it shall deposit the auction premium with the State Government after deducting the portion payable to it as the exploration licensee; and
- d) If a mining lessee in respect of the explored area is not selected within the period specified, the State Government is liable to pay the exploration licensee an amount equivalent to 1 % of the expenditure incurred towards operations or INR 10,00,000 (Indian Rupees ten lakh) per month, whichever is higher, until the selection of such lessee or until the annulment of second attempt of auctioning the mining lease due to insufficient number of bidders. Such payment made to exploration licensee is adjusted from the amount that will be paid to it out of the auction premium to be deposited by the eventual mining lessee.

Conclusion

The proposed framework, which hews closely to the existing framework for auction of mining leases (and therefore offers a degree of familiarity to the industry) is expected to provide a conducive environment for incentivising exploration of minerals that are critical for new age electronics, transitioning to clean energy (solar, wind, electric vehicles), and to traditional sectors like infrastructure, defence, etc. The new regime is also expected to attract foreign investment and newer players to the sector, which will usher in requisite advanced technologies, finance and international expertise.

In particular, by providing a long-term recurring financial benefit to exploration licensees, the regime aims to address concerns of a perceived lack of sufficient incentive for undertaking exploration activities ever since the 2015 amendments to the MMDR Act did away with the transition from exploration to mining. This is of particular concern for deep seated minerals such as gold, silver, copper, zinc, etc., which are difficult and expensive to explore compared to surficial and bulk minerals and are resultantly relatively under-explored.

While, at first blush, there appear to be some gaps and grey areas in the regime (such as, for example, if the area held under separate prospecting licences or reconnaissance permits will be counted towards the caps on the area that can be held under an exploration licence), it is anticipated that the government will, as it has done in the past, address the same by means of timely further amendments.

Mines and Mineral

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- Regulatory Issues (including on transfer of concessions);
- Employment;
- Environment, health and safety;
- Taxation;
- Dispute Resolution and Litigation; and
- Project Finance.

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This Prism has been prepared by:



Vishnu Sudarsan

Partner











Kartikeya GS

Partner



Ayushi Chaudhary

Associate

		
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